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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,236	10/20/2003	Arnold M. Gans	MEDNUT 3.0-002	4071

530 7590 01/16/2007
LERNER, DAVID, LITTENBERG,
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EXAMINER

SHEIKH, HUMERA N

ART UNIT	PAPER NUMBER
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1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
31 DAYS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/689,236

Applicant(s)

GANS, ARNOLD M.

Examiner

Humera N. Sheikh

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-58 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Application

Claims 1-58 are pending in this action. Claims 1-58 are subject to an Election/Restriction requirement.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-23, drawn to a method of treating a mammal to promote wound healing, classified in class 424, subclass 443.
- II. Claims 24-31, drawn to a method of treating a mammal to promote wound healing, classified in class 424, subclass 443.
- III. Claims 32-53, drawn to a method of treating a mammal with a high protein concentration nutritional supplement, classified in class 424, subclass 400.
- IV. Claims 54-58, drawn to a method of inducing compliance, classified in class 424, subclass 439.

The inventions are distinct, each from the other because of the following reasons:

The Group I (claims 1-23) invention is distinct from the Group II (claims 24-31) invention. The Group II invention does not require the specific claimed percentages and ranges as required by the Group I invention. Thus, the different groups would have different issues with regards to patentability, enablement and written description. The different groups would require

different searches in both patent- and non-patent databases and there is no expectation that the searches would be coextensive. This creates an undue burden on the Examiner.

The Group I (claims 1-23) invention is distinct from the Group III (claims 32-53) invention. The Group I invention is drawn to a method to promote wound healing, whereas the Group III invention is not. Moreover, the Group I invention does not require the specific total fluid amount (about 15 mL to about 60 mL) as is claimed in the Group III invention. Thus, the different groups would have different issues with regards to patentability, enablement and written description. The different groups would require different searches in both patent- and non-patent databases and there is no expectation that the searches would be coextensive. This creates an undue burden on the Examiner.

The Group I (claims 1-23) invention is distinct from the Group IV (claims 54-58) invention. The Group I invention is drawn to a method to promote wound healing, whereas the Group IV invention is drawn to a method of inducing compliance. Moreover, the Group I invention does not require the specific total fluid amount (about 15 mL to about 60 mL) as is claimed in the Group IV invention. Thus, the different groups would have different issues with regards to patentability, enablement and written description. The different groups would require different searches in both patent- and non-patent databases and there is no expectation that the searches would be coextensive. This creates an undue burden on the Examiner.

The Group II (claims 24-31) invention is distinct from the Group III (claims 32-53) invention. The Group II invention does not require the specific claimed percentages and ranges as required by the Group III invention. Moreover, the Group II invention does not require the specific total fluid amount (about 15 mL to about 60 mL) as is claimed in the Group III

invention. Thus, the different groups would have different issues with regards to patentability, enablement and written description. The different groups would require different searches in both patent- and non-patent databases and there is no expectation that the searches would be coextensive. This creates an undue burden on the Examiner.

The Group II (claims 24-31) invention is distinct from the Group IV (claims 54-58) invention. The Group II invention is drawn to a method to promote wound healing, whereas the Group IV invention is drawn to a method of inducing compliance. The Group II invention does not require the specific claimed percentages and ranges as required by the Group IV invention. Moreover, the Group II invention does not require the specific total fluid amount (about 15 mL to about 60 mL) as is claimed in the Group IV invention. Thus, the different groups would have different issues with regards to patentability, enablement and written description. The different groups would require different searches in both patent- and non-patent databases and there is no expectation that the searches would be coextensive. This creates an undue burden on the Examiner.

The Group III (claims 32-53) invention is distinct from the Group IV (claims 54-58) invention. The inventions are distinct, each from the other, because they are drawn towards different methods. The Group III invention is drawn to a method of treating a mammal, whereas the Group IV invention is drawn to a method of inducing compliance. Thus, the different groups would entail different process steps and functions and would have different issues with regards to patentability, enablement and written description. The different groups would require different searches in both patent- and non-patent databases and there is no expectation that the searches would be coextensive. This creates an undue burden on the Examiner.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Because the above restriction/election is complex, a telephone call to applicants to request an oral election was not made. See MPEP 812.01

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Humera N. Sheikh whose telephone number is (571) 272-0604. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Humera N. Sheikh

Primary Examiner

Art Unit 1615

January 07, 2007


HUMERA N SHEIKH
PRIMARY EXAMINER
704600

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